SUPREME COURT OF THE UNITED STATES.

No. 61.—October Term, 1926.

The Louisville & Nashville Railroad Company, Appellant, *vs.* The United States.	Appeal from the Court of Claims.

[February 21, 1927.]

Mr. Justice Sutherland delivered the opinion of the Court.

Appellant owns and operates a system of railroads among which are two land-grant aided lines. During the period from 1911 to 1917 there were transported for the Government over these lines upon transportation requests large numbers of officers and enlisted men of the United States army and navy. Individual passenger rates to the public during that time were in force, and in addition certain party rates open to the public by which ten or more passengers were entitled to reduced rates. Some of the rate tariffs provided for cash payments when tickets were issued and that there should be no land-grant deductions made from such party rates. In other tariffs no such provisions were made. As initial carrier, appellant presented its bills on proper forms to the disbursing officers of the Government. In some of the bills individual rates with land-grant deductions were charged where ten or more persons had been transported in troop movement; and in others party rates without land-grant deductions were charged, depending upon which was the lower rate. The accounting officers of the Government in all these cases applied party rates with land-grant deductions. To these rulings appellant filed protests, and this suit to recover the amounts involved followed. The court below denied appellant's right of recovery. 59 C. Cls. 886.

Appellant's contentions are (1) that the Government in transporting troops has no right to avail itself of party rates but that these are restricted to passengers traveling on private account and

(2) that if the Government avail itself of the party rates it must pay cash in advance in accordance with the tariff provisions.

It is not disputed that in virtue of valid acts of Congress (for example, see c. 115, 36 Stat. 243, 256) appellant's land-grant aided lines were bound to carry officers and men of the army and navy at a rate, in the words of the law, "not to exceed fifty per centum of the compensation for such government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation" and that such amounts must "be accepted as in full for all demands for such service." That the party rates, being open to private parties, were open to the Government with a deduction of 50% under this express provision of the statute, does not admit of doubt.

Nor is there any merit in the contention that the Government may avail itself of the rate only by paying cash in advance. Appellant issued the tickets and sent in its bills therefor without asking for cash payments. It thereby waived the requirement, if any existed, for payment in cash. Moreover, as the court below pointed out, the Government from the very nature of things cannot be required to deal for transportation on a cash basis. It is not to be supposed that station agents generally are familiar with the land-grant legislation or the limits of the various land-grant lines so as to be able readily to make the necessary computations. But, in any event, the well settled practice of the Government is to issue requisitions for transportation, and to require the rendition of bills therefor to be examined and audited by its accounting officers. This method was recognized and accepted by appellant in the present case. See *Louisville & Nashville R. R. Co.* v. *United States,* 58 C. Cls. 622, 631.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.